United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-2644-45

United States Court of Appeals
For the Second Circuit

DOCKET NO. 74-2644

In the Matter of the Petition for
Limitation of Liability,
of
MARINE SULPHUR TRANSPORT CORPORATION,
As Owner,
and
MARINE TRANSPORT LINES, INC.,
As Demise Charterer,
of the Vessel MARINE SULPHUR QUEEN,
Petitioners-Appellees and Appellants,
HALGA WATSON, as widow and Executrix of Estate of
George Watson, deceased,
Claimant-Appellant and Appellee.

DOCKET NO. 74-2645

HALGA WATSON, as widow and Executrix of the Estate of
George Watson, deceased,
Plaintiff-Appellant and Appellee,
against
MARINE SULPHUR TRANSPORT CORP. and
MARINE TRANSPORT LINES, INC.,
Defendants-Appellees and Appellants.

ON CROSS APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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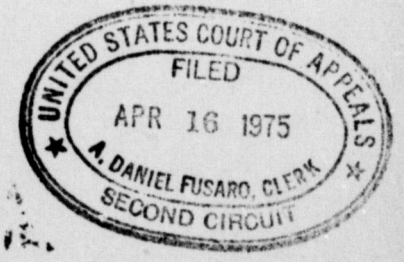

REPLY BRIEF ON BEHALF OF HALGA WATSON, CLAIMANT AND PLAINTIFF-APPELLANT AND APPELLEE

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Docket No. 74-2644

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-against-

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Defendants-Appellees and Appellants

Docket No. 74-2645

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REPLY BRIEF ON BEHALF OF HALGA WATSON CLAIMANT AND PLAINTIFF-APPELLANT AND APPELLEE

INTRODUCTION

The positions taken by the Petitioners with respect to the Claimant's appeal and their own cross appeal are warranted neither by the evidence nor the law. Petitioners' Statement of Relevant Facts is neither relevant nor factual. For example, The District Court found that the deceased would have retired at the end of 1975 (J.A. 261a), a mere six months after the expiration of the collective bargaining agreement that was in effect at the time of trial (J.A. 152a); the deceased would have either been working or on paid vacation until that time (Petitioners Brief in this Court; page 2); and the Petitioners do not challenge here the findings made by the District Judge as to the income the deceased would have received up through his retirement. No mention should have been made in Petitioners' Brief of any of the hypotheses referred to on page 2 thereof. In like vein, Petitioners refer to the possibility of a death prior to the end of the projected life expectancy of the deceased on page 3 of their brief without any challenge being made to the District Court's finding.

Without any justification whatsoever are the innuendoes as to the character of the Claimant who had a good marriage with the deceased for 9 years before the Petitioners' unseaworthy vessel brought about his death. Indeed the remarks could only

have been conceived by those who like Petitioners' current counsel did not participate in the trial, cross-examine the Claimant or observe her dignity, demeanor and character at first hand. Similarly, as will be pointed out in the discussion which follows, to make their points in the Court the Petitioners' current counsel are reduced to abandoning the positions urged by counsel who tried the case on Petitioners' behalf and to contradicting evidence that Petitioners submitted to the District Court.

POINT I

AS A MATTER OF FACT, OR LAW OR COMMON SENSE, LIMITING THE PECUNIARY LOSS OF THE WIDOW TO 50% OF THE FAMILY'S AVAILABLE INCOME WAS WRONG

Were there a finding by the District Court based upon the evidence before him that the pecuniary loss of Mrs. Watson amounted to 50% of her husband's net income, the Claimant would have to show this Court that such a finding was clearly erroneous. However, the District Judge made no such finding. The evidence with respect to the mode of living of each of the deceased and their families varied greatly in the six claims tried before him, as did documentation of the expenditures made while the deceased were alive. Despite the vast differences, the District Court ruled mechanically that the pecuniary loss of a widow without children or after the children were grown amounted to 50% of her husband's net income whether he was living at home after retirement or spent much of the year at sea with his food, lodging and subsistence paid for by his employer (J.A. 265a, 266a, 267a, 268a, 269a, 270a, 271a, 272a, 273a, 274a, 278a, 279a, 280a). This is not the sort of "finding" to which the "clearly erroneous" rule applies.*

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*As stated in the Notes of Advisory Committee on Rules to Rule 52, Federal Rule of Civil Procedure "The rule...is applicable... whether the finding is of a fact concerning which there was conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony." As pointed out in our main brief at p. 19-20, the Weinfeld Formula is not to be charged to a jury which is passing on such questions; therefore it does not even constitute a "presumption." See Rule 301 Rules of Evidence for United States Courts and Magistrates.

The purpose of the proceedings before the District Court was to ascertain the pecuniary loss of the decedent's widow. It was not to ascertain the pecuniary value of the benefits received by the deceased in his lifetime. That a deceased also received much benefit from such items as the home and car which his income provided for the use and enjoyment of his wife does not detract from the loss his wife sustains when his income stops upon his death.

When Petitioners state, as on page 10 of their Brief in this Court, that the evidence of family expenditures presented to the District Court without objection (J.A. 42a-45a, 167a-190a) was "without any significant differentiation to indicate what individual expenditures might be said to be for Mr. Watson as contrasted with expendutres for Mrs. Watson" they help to establish the Claimant's point - namely that expenditures which benefit both the husband and wife cannot be divided in order to measure the loss sustained by the wife.*

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*If, on some rationale that is not now evident, the cost of mutually shared items is to be divided in some way between the husband and wife, then it is appropriate to do so only for the period when the husband is at home, i.e., when he is on vacation or after he has retired, and only at such time might a 50-50 division be contemplated theoretically. At the time when the seagoing husband is away from home receiving food and lodging at his employer's expense there is no such mutual sharing. Indeed, this is recognized by the Petitioners in their Brief to this Court at pages 4 and 13 where they refer to "increased time ashore..attributable to the element of consumption on the part of the decedent" and "increased family household

As brought out during the cross examination of Claimant by trial counsel for Petitioners, expenditures for the household were for the "mutual benefit" of the Claimant and the deceased (J.A. 63a, 64a) not half for him and half for her.

As stated in Claimant's Brief in this Court, "The concept that when the deceased dies and his support ceases, it causes the surviving widow to sustain a pecuniary loss of only half a house or half a car or half the gas and electricity needed for the home, is an erroneous one."

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expense attributable to" (decedent) due to "increasing periods of time decedent would have been off the vessel." Under the Petitioners' analysis since the deceased did not live at home throughout the year (See Petitioners' Brief to this Court at page 4) the 50-50 allocation was clearly erroneous. The "formula" utilized by the Special Masters in the Morrell case (See Petitioners Brief to this Court at p. 7) which, in the case of seamen, allocates between husband and wife the total earnings of the decedent in the ratio of 30%-70%, is far more realistic than the 50-50 division utilized by the District Court.

POINT II

THE $9,000 "INSURANCE BENEFIT" DEDUCTION BY THE DISTRICT COURT WAS IMPROPER

Petitioners misperceive - or perhaps purposefully overlook - the essential basis for the Claimant's appeal from the $9,000 deduction made by the Trial Judge on account of "insurance benefits" received. (J.A. p. 278a)

The contention of the Petitioners that the $10,000 received by Mrs. Watson was an "alternative" to a $1,000 death benefit that would be paid to the widow of a pensioner dying after he has gone on retirement, is incorrect and there is nothing in the record to support such contention. It is for that reason why the discussion of the collateral source rule in the Blake case, (Blake v. Delaware and Hudson Railway Company, 484 F.2d 204 (2nd Cir. 1973)) in Claimant's Main Brief to this Court at pages 32 and 33, sets forth the governing principle applicable to this case, whereas, Cunningham, an earlier (1964) decision of this Court upon which the Petitioners rely, is inapposite.

The Petitioners err when they characterize the $9,000 out of the $10,000 benefit received by Mrs. Watson as the alternative to pension payments that would have gone to the deceased, under an "either-or" situation.

Here, as described previously in Claimant's Main Brief, the $10,000 payment made to Mrs. Watson was an acci-

dental death payment under the terms of the Masters, Mates and Pilots Welfare Plan Rules and Regulations. (Watson, Exhibit 32, Welfare Plan Rules and Regulations, page 18)*

Such accidental death benefit payable to his beneficiary, Mrs. Watson, when Mr. Watson died, was never designated to be payable to any decedent himself, and was completely separated from, unrelated to and independent of any provisions relating to payment of pensions to a retired deck officer.

The touchstone and applicability of the collateral source rule, as described in Blake, is the "character of the benefits received." (Claimant's Main Brief, page 32, quoting from Haughton v. Blackships, Inc.)

It is wrong and there is no support for Petitioners claim that this accidental death benefit for which the various companies under contract to the International Organization of Masters, Mates and Pilots were obliged to contribute, constituted an "alternative" to the Pension Plan. The companies were obliged to contribute separate amounts for Pension Plan benefits. (J.A. p. 233a) The Petitioner's argument seeking

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*Annexed to this Brief as an Appendix is a copy of that page from Exhibit 32. The amount shown thereon is $20,000, the sum now payable for accidental death, but at the time of the loss of the Marine Sulphur Queen, the accidental death benefit was in the sum of $10,000, the amount received by Mrs. Watson.

a setoff of the $9,000 is additionally tainted under the facts of this case where it was the company's own wrong-doing which caused the accidental death of Mr. Watson. Under this untenable theory, the Company would be awarded a profit from its own misdeeds.

Blake was decided by this Court in 1973. In its decision, and in discussing the continued viability of the collateral source and the elements that determine its applicability, it cites its earlier decision in Cunningham v. Rederiet Vindeggen, A/S, 333 F2d 308 (2nd Cir. 1964) (Claimant's Main Brief, page 32). In concluding its discussion and findings that the collateral source rule was applicable, the Court in Blake stated as follows:

> "In both cases, Hall and Haughton, the railroad was denied the claimed credit. Those decisions are in accord with the opinions of this Court cited above." (484 F.2d 204 at page 207).

Whatever principle Cunningham may have stood for, this Court in Blake did not find it to be one that barred the applicability of the collateral source rule, where, as here, the "character of the benefits received" - an accidental death benefit - is unrelated to and independent from pension payments to which the deceased would have been entitled had he not lost his life on the Marine Sulphur Queen.

The $9,000 deduction made by the trial judge was error.

POINT III
NO DEDUCTION SHOULD HAVE BEEN MADE FOR INCOME TAXES

The instructions provided by the McWeeney case do not detail the actual dollar amount of the decedent's annual income which should not be subject to taxes. Rather, McWeeney describes the type of case, involving a certain type of wage earner, which should not have applied to it a deduction for income taxes. This type of exempt case is that found in "the great mass of litigation at the lower or middle reach of the income scale..." (McWeeney v. New York N.H. and H.R.R. Co., 282 F.2d 34, 38 (2nd Cir. 1960), cert. denied, 364 U.S. 370 (1960).

The Watson case before this Court is clearly that type of case. Captain Watson was an annual wage earner, working pursuant to the rates and terms of a collective bargaining agreement negotiated for him by his union. Petitioners recognized this fact, and in their Brief to the Trial Judge, made no claim -- and make no claim to this Court -- that Captain Watson's income should be taxed when in any year, it was less than $25,000. (Petitioner's Brief to Trial Judge, p. 6 and 7) Judge Cannella, in his decision, followed this suggestion, and made no tax deduction in the years when income did not reach $25,000. (J.A. p. 250a)

However, when by reason of the established collective

bargaining agreement annual increments Captain Watson's projected annual salary rose above $25,000, the District Judge made a deduction for income taxes in each of those years.

It is submitted that the increases in the annual salary, brought about by regular annual increments provided for under a collective bargaining agreement, do not at some point change Captain Watson's "case", clearly and concededly found in the "great mass of litigation" and not subject to taxation, into that extraordinary type of case, in a certain few years, subject to a deduction for taxes.

The rationale for making no deduction for income taxes, as described in McWeeney and as set forth in Claimant's Main Brief, exists in the Watson case not only in those years when income did not reach $25,000, but also when, by reason of the contract raises, it went beyond $25,000. The District Judge erred in making any deductions referable to income taxes.

POINT IV

EVIDENCE OF THE VALUE OF MEDICAL BENEFITS LOST WAS PRESENTED AT THE TRIAL

Despite the statement made by the Petitioners, the language of the District Court, in denying recovery for the loss of various health and welfare benefits is not clear. The Court described its reason for such denial in the following terms:

> "Absent any proof of the loss suffered by the beneficiaries, an award for these benefits would be purely speculative." (J.A. p. 253a)

If, in fact, the Trial Court was applying the measure and standard stated in Sweeney v. American Steamship Company, 491 F.2d 1085 (6th Cir. 1974) his statement is erroneous in view of the evidence that was presented at trial on the value of the benefits lost.

As stated in our Main Brief, the Claimant testified without objection, that for hospital and medical coverage at the time of trial, she was paying $60 per year toward Blue Cross and Blue Shield coverage, which amount was matched by her employer, and that she also carried additional health insurance for which she paid $204 per year. (J.A. page 54a, 55a)*

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*Petitioners' insinuation that the $204 payment related to life insurance rather than health insurance (Petitioners' Brief p. 24) is ill-founded. Although the policy was with the Prudential Life Insurance Company, Mrs. Watson's testimony with respect to this

(Footnote contined on next page)

Thus, proof of the value of the fringe benefits lost was in fact presented at the trial, and if that is what the District Judge meant when he used the phrase "proof of the loss" in his decision, then his statement that there was an absence of such proof was clearly wrong.

On the other hand, Petitioner's Brief to this Court, suggests that the "loss" which Judge Cannella referred to in his opinion refers to actual medical treatment and benefits received by Mrs. Watson, and that since there was no such showing at the trial, Mrs. Watson suffered no loss. The Petitioners put it this way:

> "There was no evidence whatever with respect to any benefits that the Claimant could have had under the medical-welfare plan that she did not have in the period over 10 years since the date of the sinking of the Marine Sulphur Queen. The record is clear that, in the period of more than 10 years from Mr. Watson's death

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coverage clearly showed that it was for medical, welfare plan type of coverage. The testimony with respect to this aspect was as follows:

> "Q. Incidentally, at the present time do you pay any premiums annually for any kind of welfare plan coverage such as Blue Cross, Blue Shield, things of that sort?
>
> A. Yes, I have a government policy with Blue Cross and Blue Shield, and then I carry one on my own with Prudential Life Insurance."
>
> Q. What do you pay for the Prudential Life Insurance?
>
> A. It is about $204 per year."(J.A. p. 54a)

> to the date of trial, she was not injured or hospitalized and was only sick once, for five days with influenza." (Petitioners'Brief p. 23).

If, under their alternative view, actual medical treatment is what Judge Cannella meant by "loss suffered by the beneficiaries..." then Judge Cannella's decision, as a matter of law, is erroneous, since that is not the criteria set forth in the Sweeney case nor in the other cases cited in Claimant's Main Brief, (Claimant's Main Brief, p. 42), nor the proper one to be applied.*

The benefits provided under the decedent's union welfare plan were introduced into evidence. (Watson Exhibit 32) Mrs. Watson's testimony with respect to the annual $324 payment per year was in response to the question asking for amounts spent annually for "any kind of Welfare Plan coverage." (J.A. p. 54a)

In view of the evidence presented, it was clearly

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* Further support for the conclusion that Judge Cannella did, in fact entertain this erroneous view of what had to be shown at trial, is found in the argument on this point -- similarly erroneous -- submitted to him by Petitioners in their Reply Brief on Damages. On page 15, Petitioners stated as follows:

> "In this case, in the absence of any evidence of actual medical expense incurred by the decedents' beneficiaries for which they would have been covered had their decedents continued to live, it is submitted that there is no basis on which to make any award and that there should be no recovery for this item of loss." (Emphasis supplied)

erroneous for the District Judge to deny recovery in the annual amount of $324 for the loss of the benefits provided under the Masters, Mates and Pilots Welfare Plan.

POINT V

THE 6% ANNUAL INCREASE FACTOR IN THE CALCULATION OF FUTURE EARNINGS WAS FULLY WARRANTED BY THE EVIDENCE AND THE COURT FURTHER SHOULD HAVE PROVIDED A 4 1/2% ANNUAL INCREASE FACTOR IN THE CALCULATION OF FUTURE PENSION

The claimants, all of whose decedents were licensed deck or engineer officers, offered substantial testimony, including expert testimony, to show that the wages of such licensed officers were likely to increase at a rate in excess of 6% a year subsequent to June 15, 1975, the end of the collective bargaining agreements in effect at the time of trial. (J.A. p. 81a-108a; 138a-140a; Watson Exhibit 3, p.216-219) That such wages were likely to rise was further agreed to by the expert witness tendered by the Petitioners who was prepared to assume an increase in wages of 5% a year for the period after trial through the projected retirement date of each deceased. (e.g., J.A. p. 67a) In their Brief on Damages and Reply Brief on Damages to the District Court, the Petitioners' former counsel allowed in their calculations "for increases in future earnings at 5% per annum" but sought as a countervailing offset" an appropriate deduction for income taxes where earnings are projected at levels in excess of $25,000 per year,..." (Petitioners' Brief on Damages page 10a), and "submitted that the Court should adopt Petitioners' suggested

5% factor as being consistent with what Claimant's decedents might reasonably have expected to receive in the form of wage increases and gross earnings had they had to earn them." (Petitioners' Reply Brief on Damages, page 13)

The other evidence produced at the trial showed that the collective bargaining agreement of the decedent's union provided for annual increases of 6% in each of the years 1969, 1970, and 1971 (J.A. p. 145a) and that in the current three-year agreement from June 1972 through June 1975, a 6% increase was provided for in the first year and there was sufficient money to provide for a 6% increase annually in the remaining two years. (Testimony of Eugene Yourch, Vice President of Marine Transport Lines, J.A. p. 191a, 192a)*

Unlike the approach taken by the Petitioners, the Claimant does not seek a ruling that as a matter of law, post-trial wage increases must be allowed for in all cases; rather they did prove as a matter of fact in this particular case, that such wage increases would take place. Such a finding

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*The trial took place in November and December 1973. Since that time a 6% increase for the second year, (June 1973 to June 1974), was, in fact, placed into effect, and an 8% increase for the third year (June 1974 to June 1975), was placed into effect.

as to the future is no more speculative, when based upon proper expert testimony and other evidence than a finding as to future pain discomfort and disability in a routine action for personal injuries. Fleming v. American Export Isbrandtsen Lines, Inc., 318 F.Supp. 194 (S.D.N.Y. 1970), modified on other grounds, 451 F.2d 1329 (2nd Cir. 1971)*

The reasonable probability of wage increases into the future subsequent to the trial is an element that must be considered. Curry v. United States, 338 F. Supp. 1219 at 1222 (N.D. Calif., 1971). A reasonble estimate of post-trial increases may be made. Petition of U.S. Steel Corporation, 436 F.2d 1256 at 1275 (6th Cir. 1970), cert. denied 402 U.S. 987 (1971) reh. denied 403 U.S. 924 (1971), 403 U.S. 940 (1971).

The District Court was warranted in concluding that "in view of the strong union representation, prevailing inflation, and other factors an annual increment of 6% fairly may be anticipated..." (J.A. p. 249a) The District Court's recognition of strong union representation and prevailing inflation,

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*Since the collective bargaining agreement in effect at the time of the trial was due to expire on June 15, 1975 (J.A. p. 152a) and since the District Court found that Mr. Watson would have retired at the end of 1975 (J.A. p. 261a) a mere 6 months later, the allowance of an annual increase factor in the calculation of future wages is handly significant with respect to this appeal.

called for a 4 1/2% annual increase factor in the calculations of future pension for the reasons set forth in Point V of Claimant's Main Brief.

POINT VI

THE PRE-JUDGMENT INTEREST AWARDED BY THE DISTRICT COURT WAS PROPER

Petitioners' former counsel who tried the case on damages to the District Court never urged that pre-judgment interest could not be awarded. Indeed, in their Briefs to the District Court they urged initially that compound and later that simple interest of 5% be added to the loss sustained in each and every year from 1963 to the date of trial. That the Claimant had sought recovery under the Jones Act in addition to The Death on The High Seas Act is of no significance at all in this case, for, when this case previously came before this Court on the question of liability, the District Court's findings as to the unseaworthiness of the vessel under The Death on The High Seas Act were affirmed without reaching the questions of negligence. 460 F.2d 89 at 97, 98. (2d Cir. 1972) Since a Jones Act recovery must be based on negligence and does not include unseaworthiness, Usner v. Luckenbach Overseas Corp. 400 U.S. 494, 498 (1971), it cannot be said that the Claimant recovered her damages in a claim under the Jones Act.

As to the rate at which pre-judgment interest was allowed, there was substantial expert testimony before the District Judge that sophisticated investors were able to earn over 6% compound interest during the period 1963-1973.

Moreover, corporate bonds which are intermediate yield instruments, provided an average rate of return of 6.15% per annum during this 11 year period.*

In Petition of the City of New York, 332 F.2d 1006 at 1009 (2d Cir. 1964) cert. denied, 379 U.S. 922 (1964) this Court refused to reverse an award by the District Court in an admiralty death case of pre-judgment interest at the rate of 6% per annum:

> "Finally, the district court's allowance of interest at the rate of 6% cannot be deemed so high as to exceed the permissible limits of the trial court's discretion. While we might not have awarded interest of the full legal rate, it was within the power of the Court to have done so."
>
> 332 F.2d at p. 1009.

As noted above, the Petitioners urged the District Court to award pre-judgment interest at the rate of 5% for each and every year from 1963 to 1973. Their argument that pre-judgment interest for the period 1963-1967 would penalize the shipowner, is not warranted. The shipowner had the use of this money for the entire period, was able to reinvest the income therefrom each year and, as a sophisticated investor,

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*The use of 4% return on investment as an actuarial assumption by a pension plan (J.A. p. 30a) shows that the true rate of return is substantially greater.

was able to earn substantially more than the 6% compound interest awarded by the District Court. It is not being penalized when it is asked to give up part of the benefit it received as the result of the delay in the resolution of this litigation. As noted by the Court in Petition of City of New York, supra.,

> "...It is the combination of these two elements, the immediate loss to the plaintiff and the delay in the payment of compensation by the defendant that warrants the granting of prejudgment interest as a proper element of damages in fixing the loss to the dependents of decedents who bring suit in a court of admiralty."
>
> 332 F.2d at p. 1008.

The extensive pre-trial discovery to which the Petitioners make reference was, of course made necessary by the fact that there were no survivors to the loss of their unseaworthy vessel who could testify as to the nature of the disaster. See 460 F.2d 89 at 94. Under these circumstances, there is no injustice in requiring the Petitioners to pay pre-judgment interest for the entire period from the loss to the decision on the question of damages.

Since the Petitioners had the use of the money for the entire period from the loss to the decision on the question of damages, they were able to reinvest the income which they received each year, thereby earning compound rather than simple interest. The expert whose testimony the Petitioners offered

at the trial testified as to the suitability of compounding pre-judgment interest. Based upon the uncontradicted unanimous testimony of expert witnesses offered by both sides (Zdanowicz, Transcript November 30, 1973, pages 185-188 and Ornati Transcript November 26, 1973 (Watson Exhibit 2) page 182), the District Court found that the use of rates of compound interest was proven to be appropriate. In their initial Brief on Damages to the District Court trial counsel for the Petitioners submitted that a compound interest rate of 5% was appropriate.

The bankruptcy case and authorities of the law of contracts upon which the Petitioners rely are simply not germane to these admiralty death actions where the plaintiffs are to be compensated for "pecuniary deprivation" which includes the "delay in receipt of compensation for pecuniary loss." Moore-McCormack Lines Inc. v. Richardson, 295 F.2d 583 at 593 (2d Cir. 1961), cert. denied, 368 U.S. 989 (1962), reh. denied, 370 U.S. 965 (1962).

If, as the Petitioners claim, the use of compound interest is "against public policy" then their insistence upon discounting anticipated post-trial pecuniary loss is unwarranted as such discounting is predicated upon the use of compound rather than simple interest.

Moreover, in their Brief on Damages and Reply Brief on Damages to the District Court, Petitioners urged that for several reasons,"not the least of which is fundamental

fairness," the same rate - whatever it might be - should be used for both pre-judgment interest and discounting to present value. Judge Cannella did just that, applying in both instances the same 6% compound rate. (J.A. p. 278a, 279a, 280a)

The Claimant has proven in this case and the District Court properly found that certain rates of interest, which happen to be compound interest, are the appropriate means to compensate the dependents of the deceased for the delay in the receipt of compensation for their pecuniary loss.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, AND IN CLAIMANT'S MAIN BRIEF, THE MATTERS RAISED BY PETITIONERS ARE, IN ALL RESPECTS, WITHOUT MERIT, AND THE CROSS-APPEAL SHOULD BE DENIED. THE RELIEF SOUGHT BY CLAIMANT IN HER APPEAL IS FULLY WARRANTED AND SHOULD BE GRANTED.

Respectfully submitted,

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APPENDIX

Watson Exhibit 32

Masters, Mates and Pilots Welfare

Plan Rules and Regulations, page 18

M.M.& P. WELFARE PLAN REGULATIONS

ARTICLE III

Section 7. Schedule of Indemnities

The "full amount" of benefits for death or dismemberment by accidental means shall be $20,000 if the Employee was eligible for Extended Benefits, provided, however, that the "full amount" of benefits for loss of life shall be $5,000, in any case unless the beneficiary eligible to receive the benefit is a member of the immediate family of the decedent, which shall be deemed to include only his spouse, children and mother and father. (Amendment No. 53 - Adopted October 17, 1973 - Eff. January 1, 1973). If the employee was not eligible for Extended Benefits, the "full amount of benefits" shall be $5,000.00.

(a) The full amount of insurance shall be payable for loss of:

Life
Both hands
Both feet
One hand and one foot
Sight of both eyes
One hand and sight of one eye
One foot and sight of one eye

(b) One-half of the full amount of insurance shall be paid for loss of:

Sight of one eye
One hand
One foot

(c) Loss of hands or feet shall mean loss by severance at or above the wrist or ankle joint, and loss of sight shall mean total and irrecoverable loss of sight.

Continued